



J. MICHAEL BOGGS
KILPATRICK STOCKTON LLP
1001 WEST FOURTH STREET
WINSTON-SALEM NC 27101-2400

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FEB 10 2005

OFFICE OF PETITIONS

In re Application of
Sanford Henick et al.
Application No. 10/781,039
Filed: February 17, 2004
Attorney's Docket No. 36869-297371

ON PETITION

This is a decision on the petition filed May 27, 2004 under 37 CFR 1.10(d), requesting that the above-identified application be accorded a filing date of February 17, 2004, rather than the presently accorded filing date of February 18, 2004.

Petitioners request the earlier filing date on the basis that the application was deposited in Express Mail service on February 17, 2004, pursuant to the requirements of 37 CFR 1.10.

Paragraph (d) of 37 CFR 1.10 states that:

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and

(3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came

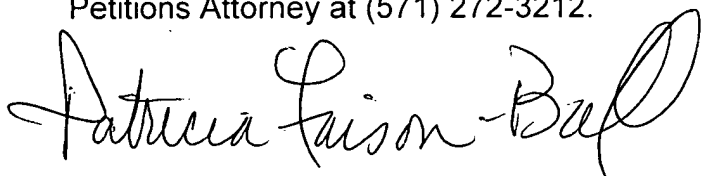
into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

The petition filed May 27, 2004, is accompanied by a statement from the employee responsible for depositing express mail package EV216832695US (along with five other express mail packages) with the USPS on February 17, 2004 as well as statements from USPS managers that the above referenced express mail package had to have been deposited on February 17, 2004, even though the express mail label indicates a date-in of February 18, 2004. The USPS acknowledges that the express mail package was in fact in the control and custody of the USPS on February 17, 2004 and that the error in recording the correct date-in on the express mail label was USPS error. Thus, the petition is accompanied by the corroborating evidence required by the rule. Accordingly, the petition is **GRANTED**.

In view of the above and given the basis for granting the petition, no petition fee is due and none has been charged.

This matter is being referred back to the Office of Initial Patent Examination for correction of the filing date to February 17, 2004 and for a mailing of a corrected filing receipt.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.

A handwritten signature in black ink, reading "Patricia Faison-Ball". The signature is written in a cursive, flowing style with a large, looped initial 'P'.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions